



Kurukulasuriyage Don Douglas Hemapriya Dayarathna, et al. v Minister of Health and Indigenous Medicine, et al.

SC Application Nos 513-528/98, unreported

Country: Sri Lanka

Region: Asia

Year: 1999

Court: Supreme Court

Human Rights: Right to work

Facts

The sixteen petitioners responded to a notification in the Government Gazette calling for applications for training as Assistant Medical Practitioners (AMP). All the petitioners possessed the stipulated qualifications, submitted applications in the terms of the notification and successfully sat the examination qualifying them for the training. However, before the final stage of the process, which involves an interview to check qualifications, the petitioners were asked by circular to apply for training for professions such as Pharmacists instead, which have different standing and eligibility for training courses. The most important difference is that after serving a number of years an AMP may be entitled to register to practice medicine and surgery. The petitioners allege that the respondents' actions violated their constitutional right to equality (Art 12) and their legitimate expectation.

Decision and Reasoning

The Court held that:

Bearing in mind the superior qualifications required to become an AMP, the superior training offered to AMP trainees and the fact that all the petitioners had, subject to verification of their certificates at interview, qualified themselves for admission to AMP training, the circular was manifestly unreasonable and unfair, discriminating between similarly situated earlier applicants and the petitioners. It is a constitutional requirement and a cardinal principle of good public administration that all persons in a similar position should be treated similarly. Article 12 requires substantive as well as formal equality, so that administrative rules, procedures and schemes are not discriminatory on invidious and irrational grounds.

Whilst the discretion of the executive should not be restricted so as to hamper or prevent change in policy, it is not entirely free to overlook the existence of legitimate expectation. In each case the court must weigh the genuine public interest against private interests and decide on the legitimacy of an expectation. In particular, the executive should not be allowed to depart from a representation or pre-existing policy where an individual has relied on it, unless the overriding public interest requires it, and then only after a hearing. In the present case the petitioners had a legitimate expectation that on completion of the stipulated requirements they would embark on training but they were not given an opportunity to state why the policy change would affect them unfavourably. Procedural rights have an important bearing on the protection afforded by Art 12 by ensuring formal justice and the rule of law, by providing objectivity and impartiality. In the present case there was no overriding public interest requiring a change in policy and the petitioners' legitimate expectations survive the policy change that has taken place. The second respondent breached Art 12 of the Constitution, the circular is of no force and the respondents are ordered to hold interviews for the petitioners and to commence the original advertised training scheme within a reasonable time.

Decision Excerpts